

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.11 of 2015

Date of Decision: 06.01.2015

Food Corporation of India and others

. . . . Petitioners

Vs.

Punjab State Ware Housing Corporation

. . . .Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Manav Bajaj, Advocate, for
Mr.Sumeet Goel, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The present revision petition has been filed by the Food Corporation of India assailing the order dated 17.10.2014 by which the properties of the petitioners have been attached.

In brief, the suit filed by the respondent/plaintiff was partly decreed on 30.11.2013 holding it entitled to the declaration that the petitioners/defendants had illegally and arbitrarily deducted the amount of ₹3,16,95,006/- out of the pending rice bills of the plaintiff and the plaintiff was further held entitled to recover a sum of ₹1,08,63,286/- with interest @ 12% per annum on amount of ₹3,16,95,006/- for the period when the said amount was deducted till the period rice was auctioned and 12% per annum on ₹1,08,63,286/- with effect from the date when the rice was auctioned till the date of passing of decree. The plaintiff was also

entitled to recover future interest @ 6% per annum on ₹1,08,63,286/- from the date of passing of decree till realization.

Aggrieved against the aforesaid decree, the petitioners filed the appeal which was barred by limitation. At the same time, the plaintiff had filed execution application under Order 21 Rule 11 of the Code of Civil Procedure, 1908 [for short 'the Act'] for recovery of ₹2,97,30,487/-. In the application for condonation of delay notice was issued to which reply was filed and on the basis of the pleadings of the parties two issues were framed by the appellate Court on 10.7.2014. While the application for condonation of delay is being decided, the Executing Court passed the impugned order on the request of the plaintiff attaching the properties from No.1 to 8 mentioned in the list provided by the judgment debtors to the Court.

Learned counsel for the petitioners has submitted that since there is no stay in the appeal preferred by them, the plaintiff is pursuing the execution application without cooperating in the decision of the application for condonation of delay. In this regard, he has drawn the attention of this Court to an order dated 10.11.2014 whereby an application filed by the petitioners for early hearing was dismissed. It is thus submitted that if the impugned order is not stayed during the pendency of the appeal, the working of the petitioners/Corporation would come to a stand still.

I have heard learned counsel for the petitioners and perused the available record.

There is no dispute that the Civil Court had passed the decree on 30.10.2013. As per Section 96 of the CPC, the said

judgment of the Civil Court was appealable for which the limitation was of 30 days but the appeal was filed after a delay of 12 days which has been contested by the plaintiff and the issue has been framed by the Appellate Court to the effect as to whether there is sufficient ground to condone the delay in filing of the appeal. Since, there is no stay in the appeal, as it has not been duly constituted until and unless delay is condoned, there is no error on the part of the Executing Court to proceed with the execution in which, on the application of the plaintiff, the properties of the petitioners have been ordered to be attached.

Learned counsel for the petitioners is failed to point out any error of exercise of jurisdiction in the impugned order which has rightly been passed by the Appellate Court in the given facts and circumstances.

In view thereof, I do not find any merit in the present revision petition and the same is hereby dismissed.

06.01.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**